fered as to whether he was first or second indorser; some holding him *prima facie* second indorser. *Coggswell v. Hayden,* 5 Ore., 22; *Phelps v. Vischer,* 50 N. Y., 69. Others treated him as first indorser. *Davis v. Barron,* 13 Wis., 227. In England such an indorser was not liable at all. *Steele v. McKinley,* 5 App. Cas., 754; *Gwinnell v. Herbert,* 5 Adol. & E., 436. The Negotiable Instruments Law has made important changes in the States where it has been adopted. Section 17, subdivision 6, provides that where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is deemed an indorser. Section 64 provides that where a person, not otherwise a party to the instrument places thereon his signature in blank before delivery, he is held as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third person, he is liable to the payee and all subsequent parties. (2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer. (3) If he signs for the accommodation of the payee he is liable to all parties subsequent to the payee. Section 68 provides that as respects one another, indorsers are liable *prima facie* in the order in which they indorse, but evidence is admissible to show that as among themselves they have agreed otherwise. Since the passage of the act there has been some conflict as to whether parol evidence may be received to give the contract a different effect; some Courts holding that parol evidence is admissible; *Haddock v. Haddock,* 192 N. Y., 499; *Bank v. Busby,* 113 S. W. (Tenn.), 390; others holding it not. *Bank v. Bichel,* 143 Ky., 754; *Nimmecll v. Weil,* 95 Ill App., 15; *Baumeister v. Kuntz,* 35 Fla., 340. It is the evident purpose of the statute to exclude parol evidence, and make the written contract control the rights of the parties; therefore to allow parol evidence is reading into the act a meaning not expressed by the words themselves. The act has not been adopted in Vermont.

CONSTITUTIONAL LAW—UNLAWFUL DISCRIMINATION—RAILROAD RATES. —STATE EX REL. SIMPSON V. CHICAGO, M. & ST. P. RY. CO., 137 N. W., 2 (MINN.).—*Held,* that an act establishing a lower rate than the maximum passenger rate for the carriage of the members of the State's military force upon railroad lines within the State, when such members are required to so travel under orders in discharge of their military duties, is not an unlawful discrimination of which the defendant may complain; the defense having been waived that such rate is not compensatory.

There is but one other case that discusses this question and that case reaches a conclusion contrary to the one established in the principal case, holding the act unconstitutional under the Fourteenth Amendment to the Constitution of the United States. *Re Gardner,* 84 Kan., 264. But similar statutes requiring a street car company to carry school children at half the regular fare have been held valid. *Com. v. Interstate Street R. R. Co.,* 207 U. S., 79; *Fitzmaurice v. N. Y., N. H. & H. R. R. Co.,* 192 Mass., 159; *San Antonio Traction Co. v. Altgelt,* 200 U. S., 304. A law requiring a

railroad company carrying live stock for an individual, to carry him free of charge was held to be unconstitutional. *A., T. & S. F. R. R. Co. v. Campbell,* 61 Kan., 439. Also laws requiring a railroad company to issue mileage bocks at a lower rate than that regularly charged passengers have been held void. *Smith v. Lake Shore & M. S. R. R. Co.,* 173 U. S., 684; *Atty. Gen. v. Boston & A. R. R. Co.,* 160 Mass., 62. A State law establishing rates for transportation which will not admit of the carrier earning such compensation as under all circumstances is just to it and the public is unconstituional. *Wallace v. Arkansas Cent. R. R. Co.,* 55 C. C. A., 192. The principal case disapproves of *re Gardner,* and distinguishes itself from *Lake Shore, etc., R. R. Co. v. Smith* in that that case held the act unconstitutional because of the uncertainty of the earnings of the company, this defense having been waived in the principal case. The opinion points out that requiring a lower rate for the transportation of the State's troops is not discrimination against the company, because it receives all that it may legaly demand; nor is it class discrimination, for the State pays the transportation. The case is well argued and reaches a sane conclusion.

EASEMENTS—DISTINCTION IN CLASSES.—ADAMS V. HODGKINS, 84 ATL., 530 (ME.).—*Held,* that on an issue of abandonment of an easement for a right of way across land, there is a distinction between an easement created by deed and one acquired by prescription.

An easement acquired by actual deed or reservation is not lost by non-user, but can only be lost by hostile and adverse possession for the prescriptive period. *Edgerton v. McMullen,* 55 Kan., 90; *Kammerling v. Grover,* 9 Ind. App., 628. By statute in California, Montana, North Dakota, South Dakota and Oklahoma, it is provided that an easement acquired by prescription is extinguished by the disuser of the owner for the period prescribed for acquiring the title. The cases of *Browne v. Baltimore M. E. Church,* 37 Md., 108, and *Shields v. Arndt,* 4 N. J. Eq., 234 (*dictum*), arrive at the same conclusion under the theory that long non-user affords a presumption of a release of the right. The distinction then between the two kinds of easements lies in the methods of their abandonment. This distinction is recognized to a limited extent in New York, Maine and Massachusetts. The distinction, however, seems to be an impractical one as both easements arise out of a grant. *Veghte v. Raritan Water Power Co.,* 19 N. J. Eq., 142. The present trend of the Courts is, in the absence of statutes, to entirely disregard the difference and to require actual adverse possession for the prescriptive period in order to extinguish any easement.

EXECUTORS AND ADMINISTRATORS—SALE OF REAL ESTATE—WARRANTIES —IVEY V. VAUGHN ET AL., SINCLAIR V. SAME, SMITH V. SAME, 76 S. E., 464 (S. C.).—*Held,* that where a testator's will, though authorizing his executors to sell his realty, did not authorize them to give a warranty, and